

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 109 of 2016

BETWEEN : STATE

AND : USAIA VUNIWA

Counsel : Ms Saini Naibe for the State  
Ms Nimita Sharma for the Accused

Date of Plea : 02 September 2019

Sentencing Hearing : 05 September 2019

Date of Sentence : 30 September 2019

SENTENCE

1. Usaia Vuniwai, you stand convicted of rape contrary to section 207(1) and (2)(a) of the Crimes Act 2009. The particulars of offence read as follows;  
“Usaia Vuniwa on the 27<sup>th</sup> day of May 2016, at Lautoka in the Western Division had carnal knowledge of Asenaca Neira without her consent.”
2. The maximum sentence for rape is life imprisonment. The tariff for adult rape is 7-15 years. (Rokolaba v State [2018] FJSC 12; CAV0011.2017 (26 April 2018).

3. You were indicted for rape on 23 June 2016. On the date of the trial you pleaded guilty to the charge of rape. You admitted the summary of facts and upon being satisfied of your unequivocal plea you were convicted as charged.
4. As per the summary of facts the complainant was 19 years and you were 39 years when the offence was committed. The complainant was residing at her uncle's place at Yanuya village, Malalo. You were a neighbour of the complainant. On 26 May 2016 when the complainant was drinking grog with the other family members one of her neighbours brought a bottle of rum and a carton of beer, at around 10pm. The complainant, her uncle and you started drinking alcohol. At around 12 am the complainant went to sleep in the sitting room. The complainant was drunk. When she was lying down you came to her and kissed on her lips. You pulled up her skirt and removed her undergarment. You licked the complainant's vagina. Then you inserted your penis into the complainant's vagina while the complainant was fast asleep. In the morning when the complainant went to relieve herself, she felt different. The complainant's cousin was observing the incident and, in the morning, he informed the complainant about what you did to her. Later the matter was reported to the Police and you admitted to the offence under caution.
5. The age disparity between you and the complainant is 20 years. You were trusted as a neighbour. You exploited the trust to gain entry into the house to commit the offence. Further you took advantage of the complainant's vulnerable and impaired condition due to alcohol. You engaged in a sexual act without any regard to the complainant's 14 year old cousin who was lying next to her. I consider those as aggravating factors.
6. I have considered the mitigation submissions filed on your behalf. You are 42 years old and married. You have 4 children aged 15 years, 5 years, 3 years and 3 months. You support your 70 year old sickly mother. You are the sole breadwinner of the family. It was submitted that you have been a law-abiding

citizen for the last ten years. It should be noted that your personal circumstances and previous good character carry only a little mitigating value.

7. You have expressed remorse by pleading guilty although it cannot be considered an early plea.
8. *Rainima v State* [2015] FJCA 17; AAU0022.2012 (27 February 2015) it was observed that;

“It has always been accepted (though not by authoritative judgment) that the "high water mark" of discount is one third for a plea willingly made at the earliest opportunity. This Court now adopts that principle to be valid and to be applied in all future proceedings at first instance.”

9. In paragraph 47 of *Rainima v State* (supra) Justice Madigan has stated;

“Pleas of guilty made at later stages than earliest opportunity cause more difficulties in the assessment of how much discount should be afforded to them. It is not for this Court to suggest an appropriate sliding scale because it must remain a matter of judicial discretion. We would however make three points very clear in this regard:

- (i) A plea of guilty before trial must be afforded some discount given that the cost of trial (including time and cost of assessors) is saved.
- (ii) A plea of guilty at a later stage before a trial involving a vulnerable witness must be given a meaningful discount (say 20-25%) to recognize the fact that the vulnerable witness is not put through the ordeal of giving evidence.
- (iii) A plea during trial after an accused has heard unshakeable evidence of a victim/complainant or after an inculpatory caution interview has been admitted into evidence is not deserving of any discount whatsoever.”

10. In *Aitcheson V The State* [2018] FJSC 29;CAV0012.2018 (2 November 2018) it was observed that;

“The one third discount may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.”

11. By pleading guilty on the day of the trial you avoided the complainant from going through the ordeal of giving evidence. Yet, in view of the above sentencing guidelines I note that you are not entitled to a 1/3 discount, but for a lesser discount.

12. In this case I pick 7 years as the starting point. I add 4 years for the aggravating factors. I deduct 1 year for mitigation. Further I give you a discount of 2 years for your plea. Accordingly, I impose 8 years imprisonment on you.

13. You were in remand custody for a little more than a month. The time in remand custody has to be regarded as a period of imprisonment already served by you. Therefore, I deduct 5 weeks from your sentence.

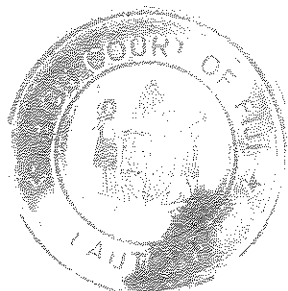
14. Section 18 of the Sentencing and Penalties Act provides that the Court must fix a period during which the offender is not eligible to be released on parole when the Court sentences an offender for more than two years. However, in the recent Supreme Court decision in *Nacani Timo V State* Criminal Petition No: CAV 0022 of 2018 it was decided that;

“It is not mandatory for a Court to award a non-parole period to every convict. However, a decision to award or decline to award a non-parole period must be taken by a court after hearing a convict and the decision must be accompanied by reasons, with an economy of words, as a part of a just, fair and reasonable procedure keeping the interests of the convict and society( including the victim) in mind”.

15. You have committed a very serious offence. Sexual offences of any nature are considered degrading and the sentence must reflect the court's abhorrence to such egregious crimes. At the same time the court has to acknowledge the significance of rehabilitation. You are going to leave behind a young family who need your care and support. I believe that there are appropriate circumstances to leave room for you to reap full benefits of genuine rehabilitation. Therefore, I decide not to set a non-parole period.

16. Accordingly, you are sentenced to 7 years 10 months and 3 weeks imprisonment.

30 days to appeal to the Court of Appeal.



A handwritten signature in black ink, appearing to read 'Rangajeeva Wimalasena'.

**Rangajeeva Wimalasena**  
**Acting Judge**

At Lautoka

30 September 2019

**Solicitors**

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Legal Aid Commission